No. 12,739

IN THE

United States Court of Appeals

For the Ninth Circuit

CECIL ARMSTRONG,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

BRIEF OF APPELLEE.

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BRIEF OF APPELLEE.

STATEMENT OF THE CASE.

Appellant Cecil Armstrong pleaded guilty to an indictment charging four counts of mail theft. On April 7, 1949, he was sentenced to a term of five years on count one, and, consecutively, to a term of three years on counts two, three, and four, these latter sentences to run concurrently with each other.

On September 26, 1950, appellant applied to the trial court for a correction of sentence, which motion was denied. Leave to appeal in *forma pauperis* was granted.

The sole point raised by appellant is that the indictment under which he was sentenced did not specify the value of the letters he had stolen, and accordingly,

it is to be presumed that the value of the stolen letters was less than $100, and hence under the provision of Title 18, United States Code, Section 1708, the maximum sentence permissible under the statute was one year on each count.

The sole issue then is the construction of Section 1708, Title 18, United States Code, adopted September 1, 1948:

> "§1708. Theft or receipt of stolen mail matter generally
>
> "Whoever steals, takes, or abstracts, or by fraud or deception obtains, or attempts so to obtain, from or out of any mail, post office, or station thereof, letter box, mail receptacle, or any mail route or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or abstracts or removes from any such letter, package, bag, or mail, any article or thing contained therein, or secretes, embezzles, or destroys any such letter, postal card, package, bag, or mail, or any article or thing contained therein; or
>
> "Whoever steals, takes, or abstracts, or by fraud or deception obtains any letter, postal card, package, bag, or mail, or any article or thing contained therein which has been left for collection upon or adjacent to a collection box or other authorized depository of mail matter; or
>
> "Whoever buys, receives, or conceals, or unlawfully has in his possession, any letter, postal card, package, bag, or mail, or any article or thing contained therein, which has been so stolen, taken, embezzled, or abstracted, as herein de-

scribed, knowing the same to have been stolen, taken, embezzled, or abstracted * * *

"Shall be fined not more than $2,000 or imprisoned not more than five years, or both; but if the value or face value of any such article or thing does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both."

CONTENTION OF APPELLANT.

Appellant contends that in cases of mail theft the government must allege and prove that the value of the stolen mail exceeds $100 in order to sustain a felony conviction and sentence.

CONTENTION OF APPELLEE.

The construction advanced by appellant is illogical, not in accord with the history of the offense, and results from a misreading of the statute.

ARGUMENT.

I.

TWO OFFENSES DESCRIBED IN SECTION 1708: (1) THEFT OF MAIL; (2) PILFERING FROM THE MAIL. MAIL THEFT IS ALWAYS A FELONY. PILFERING FROM THE MAIL MAY BE A MISDEMEANOR IF THE VALUE OF THE STOLEN PROPERTY IS LESS THAN $100.

This is a point of first instance, and to our knowledge no appellate court has previously ruled on the matter.

Federal statutes for generations have made theft of mail a serious felony punishable by a long period of imprisonment. The government's preservation of the integrity of the mail has been a cornerstone in the development of our national system of communication. Under the *Act of March 3, 1825, 4 U. S. Stat. at Large* 109 (1850 ed.), mail theft carried a maximum sentence of imprisonment of ten years. And continuously since 1872 mail theft has been a felony punishable by imprisonment up to five years. *Act, June 8, 1872,* 17 Stat. 318. This law was subsequently codified as Title 18, former Section 317, United States Code. A maximum sentence of five years was applicable both to mail theft and to pilfering from the mail until 1948.

In 1948 the statute was modified in one particular. In the case of pilfering from the mail the maximum sentence of imprisonment is limited to one year if the value of the article or thing pilfered does not exceed $100.

It is this provision that appellant relies on to show a change in the entire statute.

Research discloses no suggestion that the Congress intended to make mail theft a misdemeanor in all cases except where the government could prove the dollar value of the stolen mail. In the great majority of cases of mail theft it would be impossible for the government to allege or prove the value of a particular letter or other item stolen. Hence, the interpretation sought by appellant would in the great majority of cases result in reducing mail theft from a felony to a misdemeanor. If the Congress had any such intention or disposition it does not appear in the new Criminal Code. For example, Section 1702, theft of mail with intent to obstruct the correspondence or pry into the secrets of another, carries a maximum penalty of five years. This offense is in all respects comparable to the offense in Section 1708 except that the motivation of the crime in Section 1702 is personal rather than larcenous.

It is only in the case of mail pilferage, or in the language of the statute, abstracting or removing from any mail any article or thing contained therein, that the question of value becomes pertinent. It appears clear that the intent of Congress was to reduce the crime of mail pilferage to a misdemeanor in cases where the value of the article or thing pilfered did not exceed $100, i.e., make it comparable to the common law crime of petit larceny.

A logical result follows from this interpretation. The most serious act is the interference with the

government's possession of mail matter. The offense to the government is the same and the conduct of the postal service is interfered with as much when the mail matter involved is of little value as when the value is large.

II.

THE WORDING OF THE STATUTE INDICATES THAT THE MAXIMUM PENALTY OF ONE YEAR APPLIES ONLY TO THEFT FROM THE MAIL, I.E., PILFERAGE.

A reading the language of Section 1708 discloses that the application of the lesser punishment is limited to theft *from* the mail (i.e., abstracting or removing from any mail any article or thing contained therein). The phrase "article or thing" refers not to mail, letters, and the like, but to articles *"contained therein."* We reprint Section 1708 with italicized portions to make this clear:

> "§1708. Theft or receipt of stolen mail matter generally
>
> *"Whoever* steals, takes, or abstracts, or by fraud or deception obtains, or attempts so to obtain, from or out of any mail, post office, or station thereof, letter box, mail receptacle, or any mail route or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or *abstracts or removes from any* such letter, package, bag or *mail, any article or thing contained therein,* or secretes, embezzles, or destroys any

such letter, postal card, package, bag, or mail, *or any article or thing contained therein;* or

"*Whoever* steals, takes, or *abstracts,* or by fraud or deception obtains any letter, postal card, package, bag, or mail, *or any article or thing contained therein* which has been left for collection upon or adjacent to a collection box or other authorized depository of mail matter; or

"Whoever buys, receives, or conceals, or unlawfully has in his possession, any letter, postal card, package, bag, or mail, *or any article or thing contained therein,* which has been so stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been stolen, taken, embezzled, or abstracted * * *

"Shall be fined not more than $2,000 or imprisoned not more than five years, or both; but if the value or face value of *any such article or thing* does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both."

III.

THE FACTS IN THIS CASE ILLUSTRATE THE JUSTICE OF A FELONY CONVICTION.

In the instant case Armstrong was charged with stealing a letter from an authorized depository for mail matter. No other allegation was necessary in order to sustain the imposition of the sentence imposed. Recent reported cases on the subject of mail theft, the statements of the courts and the sentences

imposed in these cases, are not at variance with this view.

United States v. Kirby, 176 Fed. (2d) 101 (Second Circuit, 1949);

Green v. United States, 176 Fed. (2d) 541 (First Circuit, 1949);

United States v. Chinn, 85 Fed. Supp. 558 (Watkins, J., 1949);

Burton v. United States, 169 Fed. (2d) 969 (D. C. Circuit, 1948).

The facts of this particular case furnish good evidence why every theft of mail has always been classified as a felony. According to the papers filed by appellant in this appeal, the letters which he stole, the subject of counts two, three, and four, contained bank statements and cancelled checks of various individuals. The theft of such documents is, of course, a necessary preliminary to the forging of checks drawn on the bank accounts of such individuals, as well as an exact accounting of the maximum amount for which such checks may be passed. Such theft is patently a serious criminal offense, yet under the interpretation sought by appellant, the bank statements and cancelled checks having no actual value, all such crimes would hereafter become misdemeanors.

CONCLUSION.

The theft of the mail itself is the felony, regardless of the value of the letters stolen. Accordingly, the judgment of the trial court denying the motion for modification of sentence must be affirmed.

Dated, San Francisco, California,
January 31, 1951.

Respectfully submitted,

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